

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
JUNE 9, 2006**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on June 9, 2006, beginning at 10:00 a.m. The meeting was tape-recorded and the tape(s) are on file at the ABC Commission in the Legal Division.

**ROLL CALL**

Chairman Douglas A. Fox, Commissioner Mike Joyner and Commissioner John Lyon were present at the meeting.

**MINUTES OF MAY 5, 2006 MEETING**

Chairman Fox made a motion to waive the reading of the minutes from the May 5, 2006, meeting into the record. Seconded by Commissioner Lyon. So Ordered. Chairman Fox made a motion to approve the minutes from the May 5, 2006, meeting. Seconded by Commissioner Lyon. So Ordered.

**EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST**

As required by Executive Order Number One, Chairman Fox asked Commissioner Lyon and Commissioner Joyner if there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Lyon and Commissioner Joyner both stated that they found no conflicts of interest. Chairman Fox stated that he had no conflicts.

**I. HEARING CASES – 80 Listed**

Chief Counsel Fred Gregory stated that David Laney was present to speak for hearing case #10- D'Laney's Sports Bar & Grill. Mr. Laney stated that the pending violation was a tax stamp violation and that he had no previous violations. Mr. Laney stated that the business was able to purchase liquor at the local ABC board only two days a week. He further stated that on the date of the violation it was a busy holiday weekend and they ran out of premium liquors. Mr. Laney asked that Commission reduce the penalty by removing the active suspension and leaving the financial penalty as it stands. Chairman Fox asked how many bottles did he have. Mr. Laney stated two bottles.

Commissioner Joyner asked for more information regarding the Board being open two days a week for businesses to purchase alcohol. Mr. Laney stated you call in on Monday between two o'clock and three o'clock in order to be able to pick up on Tuesday between two o'clock and three o'clock. Mr. Laney stated that you have to call on Thursday between two o'clock and three o'clock and you can pick up on Friday between two o'clock and three o'clock. Commissioner Joyner asked if his problem was not buying enough alcohol. Mr. Laney stated he doesn't normally run out of alcohol but had sold out of a particular type of alcohol because of the holiday weekend.

Mr. Gregory stated that in cases such as this, the Commission waived the active suspension and raised the monetary penalty. Chairman Fox suggested that Mr. Laney talk to the local ABC board about how customer service could be improved. Chairman Fox made a motion to increase penalty to \$5,000.00 with no time, or to leave the suspension as is. Mr. Laney stated that he wanted to leave penalty as is. Chairman Fox made a motion to leave the penalty as is. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated that Danny Jazairi was present to speak for hearing case #60, Sams Mart 782. Mr. Jazairi stated that an inspection was done in November, 2005, and the officer asked the clerk to open the office door which was locked. Mr. Jazairi stated that the clerk asked the officer to give her ten minutes and she would

have the manager come and open the door. The officer refused. Mr. Jazairi stated he was here to see what he could do because they have 27 locations and the offices are locked after the store manager leaves because they contain cigarettes.

Mr. Jazairi stated that the only person that has access to the office is the manager. Commissioner Joyner asked Mr. Jazairi if he understood the position of the ABC law enforcement agent as to why he needs doors unlocked. Mr. Jazairi stated he understood it was one of the regulations that they have to have access to all of the premises to make sure nothing is hidden.

Mr. Jazairi suggested having access to the room during normal business hours and during third shift it would be locked. Several solutions were discussed and Commissioner Joyner stated that he appreciated Mr. Jazairi's ideas. Chairman Fox made a motion to ratify this case as is. Seconded by Commissioner Lyon. So Ordered.

Mr. Gregory stated that Jeff Laria, owner for hearing case #3- Jeff's Bucket Shop, was present to speak. Mr. Laria stated that he was asking for the Commission to consider reducing or eliminating the charges. Mr. Laria stated that his bartender carded the underage person, and it didn't register that he wasn't twenty-one years old. Mr. Laria stated that the bartender asked for the ID and thought it said 1980 instead of 1990. Mr. Laria stated the underage person ordered a Budweiser and the bartender turned around and said he was not old enough and took the beer back. Mr. Laria stated that the agent was there with the underage person and said it was too late. Mr. Laria went on to state that the sale was never rung up.

Mr. Laria stated that he now has a doorman who checks membership cards and IDs to make sure the customers are twenty-one years old. Chairman Fox asked if the bartender still worked for him. Mr. Laria stated yes she does. Chairman Fox asked how long had she been with him. Mr. Laria stated about eight months.

Chairman Fox made a motion to reduce the penalty to \$600.00 upon the stipulation that all the employees attend a RASP class within the next 30 days. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Fred Gregory stated that there were two cases for reconsideration. Mr. Gregory stated that Tim Dugan, Owner of Dugans Pub, was present to speak, for hearing case #76- Dugans Pub. Mr. Dugan stated that the problem started on August 23, 2005, when two customers came into his establishment and one of them was harassing customers and employees. Mr. Dugan stated the customer was asked to leave and he defaced the front of the property. Mr. Dugan stated he was called to come from his house and he called the police. Mr. Dugan stated he asked for a trespassing order with the Transylvania/Brevard City Police Department.

Mr. Dugan stated the customer came back in on December 24, 2005, while he was upstairs at a party at his cook's residence. Mr. Dugan stated he did go into the pub on Christmas Eve and he had a few drinks with the customers. Mr. Dugan stated he went downstairs and decided to close down the restaurant and pub. Mr. Dugan stated that the customer and three other people came in and he told them to leave. Mr. Dugan stated the customer began to use foul language and started to upset the customers and when Mr. Dugan tried to get the customer out, it ended in an altercation at the front door. The police were called and Mr. Dugan and the customer ended in a yelling argument. Mr. Dugan said he wrestled the customer to the ground until the police arrived. Mr. Dugan stated he and the customer were put in handcuffs and arrested.

Chairman Fox made a motion to reduce the penalty to \$600.00 upon the stipulation that all the employees attend a RASP Education class within the next 30 days. Seconded by Commissioner Joyner. So Ordered.

Chief Counsel Fred Gregory stated that Dennis Guthrie, attorney for hearing case #75- Jaimama, was present to speak on behalf of his client. Mr. Guthrie presented the Commission with an affidavit from the owner of the restaurant. Mr. Guthrie asked the Commission to consider eliminating the active suspension and to allow a payment plan to pay the penalty in two months instead of one. Mr. Guthrie stated it was a new business and the owner is there continually. Mr. Guthrie stated he spoke with Mr. McDougal and Mr. Cox and neither objected to eliminating the active suspension. Mr. Guthrie stated he would have brought the permittee to the meeting but she had to be at the restaurant. Chairman Fox asked how long had she had her license. Mr. Guthrie stated three months.

Commissioner Joyner made a motion to eliminate the active suspension and reduce the penalty to \$1,000.00. Seconded by Commissioner Lyon. So Ordered. Chairman Fox stated upon with the stipulation that all employees attend a RASP Education class within the next 30 days.

Chairman Fox made a motion to approve the remaining Offers in Compromise, with the exception of hearing case #3- Jeff's Bucket Shop, hearing case #60- Sams Mart 782, hearing case #75- Jaimama and hearing case #76- Dugans Pub, which had been earlier ratified. Seconded by Commissioner Joyner. So Ordered.

## **II. FIRST OFFENSE CASES – 26 Listed**

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on June 9, 2006, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. Babco Express – 3200 East Independence Boulevard, Charlotte, NC 28205
2. Piggly Wiggly of Jackson – 312 West Jefferson Street, Jackson, NC 27845
3. Otts Billiards – 1540 English Road, High Point, NC 27362
4. Habaneros Mexican Restaurant, 412-E West Fleming Drive, Morganton, NC 28655
5. Elizabeth City B P 233 – 1008 US 17 South, Elizabeth City, NC 27909
6. Casablanca Stores – 1703 Battleground Avenue, Greensboro, NC 27408
7. Club Bahia – 708 Southeast Boulevard, Clinton, NC 28328
8. Mount Airy Oil 139 – 705 Hwy 268 East Old US 52 Bypass, Pilot Mountain, NC 27041
9. M and N Quick Mart – 3173 Hwy 35, Potecasi, NC 27867
10. Xpress Mart 22 – 19128 West Catawba Avenue, Cornelius, NC 28031
11. Tienda Modelo 2 – 205 West Academy Street, Randleman, NC 27317
12. Kangaroo Express 174 – 620 West Street, Pittsboro, NC 27312
13. Food Lion 1503 – 1980 Blowing Rock Road, Boone, NC 28607
14. Food Lion 2538 – 50 Elam Road, Littleton, NC 27850
15. Food Lion 1501 – 1110 Western Boulevard, Tarboro, NC 27886
16. Yonahlossee Resort and Club Gamekeeper – 226 Oakley Green, Boone, NC 28607
17. Mash House Restaurant and Brewery – 4150 Sycamore Dairy Road, Fayetteville, NC 28303
18. Exxon 19506 – 15000 Idlewild Road, Stallings, NC 28104
19. Bethesda B P 115 – 1529 South Miami Boulevard, Durham, NC 27703
20. Campmart Citgo – 3421 North Main Street, High Point, NC 27265
21. Village Inn Pizza – 131 Independence Boulevard, Morganton, NC 28655
22. Tank N Tummy 3 – 1322 East 11<sup>th</sup> Street, Siler City, NC 27344
23. Ruby Tuesday 2760 – 1058 West Club Boulevard, Durham, NC 27701
24. Pinebluff Mini Mart – 475 North Walnut Street, Pinebluff, NC 28373
25. Han Dee Hugos 76 – 1002 South Miami Boulevard, Durham, NC 27703
26. G and S Food Mart – 2100 Lawndale Drive, Greensboro, NC 27408

Chairman Fox made a motion to approve the Offers in Compromise for the First Offense cases. Seconded by Commissioner Joyner. So Ordered.

### **III. ABC STORE LOCATION – MECKLENBURG COUNTY**

Administrator Michael Herring addressed the Commission concerning the proposed relocation of an ABC Store in Mecklenburg County. On May 15, 2006, ALE Supervisor Richard Griffin began an investigation and found the ABC board plans to lease a 1.57 acre parcel of land and to construct an ABC store on that site. The Board will close its existing store which is located at 5718 Albemarle Road, Charlotte, North Carolina and relocate to the new site. The lease is for 20 years and is broken down into five-year increments with the first five years at \$47,500.00 a year. The new location is in the 6300 block of Albemarle Road and the intersection of Farm Pond Lane, Charlotte, North Carolina.

The property is owned by Farm Pond Associates and Faison & Associates LLC. No conflict of interest exists between the property owners and the Mecklenburg County ABC Board.

The nearest church is Central United Methodist Church and is approximately .2 of a mile from the location.

The nearest school is Albemarle Road Middle School and is approximately .7 of a mile from the location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on April 12, 2006, in compliance with the ABC Commission's 30-day requirement. The ABC Commission has received no objections.

Mr. Herring recommended that the ABC Commission approve the relocation request. Chairman Fox made a motion to approve the relocation. Seconded by Commissioner Lyon. So Ordered.

### **IV. MECKLENBURG COUNTY/CITY OF MINT HILL**

Administrator Michael Herring addressed the Commission concerning a proposed location of an ABC Store in Mecklenburg County. At the March 17, 2006, Commission meeting, a request was considered from the Mecklenburg County ABC Board to purchase land and build an ABC store in front of the Mint Hill Pavilion Shopping Center.

The investigation found no conflict of interest between the Mecklenburg County ABC Board and the property owners.

The nearest church is .7 of a mile from the proposed location.

The nearest school is .4 of a mile from the proposed location. The site was properly posted.

At the March meeting, there was no decision made on that site and Mr. McDougal was asked to go back and meet with the City Officials to see if they could come to an agreement on another location in Mint Hill.

Mr. Herring stated that on May 4, 2006, Mecklenburg County ABC Board submitted a revised plan to consider optional sites in and around Mint Hill.

On May 12, 2006, the Commission received a request from Mr. McDougal requesting approval of a new location which would be built as a 5,000 square foot store in back of the Mint Hill Pavilion Shopping Center.

Pursuant to ABC Commission Rules, Notice of Intent was posted on May 8, 2006. The ABC Commission has received no objections on this new site.

Mr. Herring stated he spoke with ALE Supervisor Richard Griffin who did the original investigation and he did not reinvestigate this site. ALE Supervisor Griffin said it was in the same area, the same distance from the churches and schools and the same ownership as the previous site.

Mr. Herring stated that based on the efforts of the Mecklenburg County ABC Board and there being no objections, he had spoken with the City Manager and notified the Mayor of the request for the new site. Mr. Herring stated he had not received any information for or against the site from Mint Hill.

Pastor Proctor stated the newly identified site is less contradictory to the stated goal of the Board of Commissioners of the Town of Mint Hill in creating a family friendly town center. Pastor Proctor stated the newly chosen site is still inconsistent with the goal openly stated in it will be harmful to the well-being, health, and wholesomeness of the community.

Mr. Herring recommended that the ABC Commission approve the new store location.

Mr. McDougal stated negotiations after the March meeting were primarily with the town manager, Todd Lamb. Mr. McDougal stated he understood Mr. Lamb was going to address all the other commissioners to see if there would be any objections or concerns on their part.

Mr. McDougal stated he had not heard anything formally back from Mayor Biggers.

Chairman Fox complimented Mr. McDougal and his staff and Mayor Biggers and his staff for taking the time to reach a workable solution to a very difficult problem. Chairman Fox made a motion to approve the new site. Seconded by Commissioner Joyner. So Ordered.

## **V. ABC STORE LOCATION – DURHAM COUNTY**

Administrator Michael Herring addressed the Commission concerning the proposed relocation of an ABC Store in Durham County. On June 2, 2006, Alcohol Law Enforcement Agent C. Simpson conducted an investigation and found that the proposed location will be at Falconbridge Shopping Center, Durham, North Carolina.

The nearest church is Farrington Road Baptist Church and is one quarter of a mile from the proposed location.

The nearest school is Jordan High School and is 1.7 of a mile from the proposed site.

Pursuant to ABC Commission Rules, Notice of Intent was posted on May 8, 2006, in compliance with the ABC Commission's 30-day requirement. No complaints have been received.

No conflict of interest exists between the Durham County ABC Board and the property owners.

Mr. Herring recommended the ABC Commission approve the new store location.

Chairman Fox made a motion to approve the relocation of the store. Seconded by Commissioner Lyon. So Ordered.

## **VI. OTHER BUSINESS**

Mr. Herring proposed to the Chairman and Commission members the future Commission dates of Thursday, September 7, 2006, and Thursday, October 12, 2006. Chairman Fox made a motion to approve the Commission dates. Seconded by Commissioner Joyner. So Ordered. The Chairman stated the Commission meetings would be on Thursdays.

Mr. Herring presented the Commission with an activity report on the North Carolina ABC Commission for the month of May, 2006. The Permit Division has received 864 applications for ABC permits and that is up over 17% from May, 2005. They issued 531 permits and that is up 14% from May, 2005. The Legal Division received 859 violation reports from law enforcement and that is up over 24% from May, 2005. The Product Compliance Division approved 427 wines and 23 beers. On the wine issue in the last five days we have approved about 700 wines. The Education Division has for the first half of the year conducted 53 programs and addressed 11,000 students. In May, 20 programs were conducted and 4,180 students addressed. Eighty-three responsible alcohol server programs were held with 456 participants, and 111 industry and nonindustry members had consultations. Also, from January until May, 323 responsible alcohol server programs with approximately 2,000 participants were conducted.

Administrator Michael Herring presented the Commission with some information regarding the possible changes to the Bailment/Surcharge and Local Board Markup.

Mr. Herring stated that on September 22, 2005, the Board of Directors for the North Carolina Association of ABC Boards met and discussed was the possibility of raising the Local Markup from 38.2% to 39%. On April 26, 2006, Mr. Herring stated that he met with the four Supervisors on the ABC Board of Directors and that they were requesting the Local Markup increase to 39.5%. Mr. Herring further stated that a decision will need to be made in the future and he wanted to provide the Commission with the information.

The Chairman asked Mr. Herring and Doyle Alley, Deputy Administrator to find out if there is a statute or the authority whereby the mandatory distribution or the amount of money the boards can maintain in their operating account.

Mr. Herring stated that it is called working capital. Mr. Herring stated there is a minimum and a maximum that the boards can retain in working capital. The Commission has the authority to increase or decrease the capital fee and that would affect all of the ABC Boards.

With no further business, the meeting adjourned.

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Douglas A. Fox, Chairman  
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

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Dottie L. Taylor, Legal Division